

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Crim. File No. 05-138 (PAM)

Plaintiff,

v.

ORDER

Edmond E. Mirzakhanian,

Defendant.

This matter is before the Court on Defendant's Motion to Vacate his Sentence pursuant to 28 U.S.C. § 2255.

In May 2005, Defendant pled guilty to violating 18 U.S.C. § 513(a). In November 2005, the Court sentenced Defendant to 364 days imprisonment. Defendant did not appeal the sentence. Nonetheless, Defendant now challenges the sentence under § 2255, arguing that the Court incorrectly calculated Defendant's criminal history score.

Because Defendant did not raise this issue on direct appeal, his claim is procedurally defaulted unless he can demonstrate (1) actual innocence or (2) cause for the default and actual prejudice. United States v. Moss, 252 F.3d 993, 1001 (8th Cir. 2001) (citing Bousley v. United States, 523 U.S. 614, 622 (1998)). Defendant does not contend that he is innocent. Further, he fails to provide any reason for failing to appeal directly the alleged mis-calculation. Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion to Vacate (Docket No. 29) is **DENIED**.

Dated: July 31, 2006

s/ Paul A. Magnuson

Paul A. Magnuson

United States District Court Judge